

## Disciplinary and Other NASD Actions

### REPORTED FOR APRIL

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of March 2005.

### Firms Expelled, Individuals Sanctioned

**Florida Discount Securities, Inc. (CRD #44859 Boca Raton, Florida) and Bruce Elliot Rich (CRD #2005846, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement in which Florida Discount Securities, Inc., was expelled and Rich was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm and Rich consented to the described sanction and to the entry of findings that they used and employed deceptive, fraudulent, and manipulative devices and contrivances involving the solicitation, purchase, and sale of the common stock of highly speculative OTC equity securities to unsuspecting public customers. In addition, NASD found that they egregiously failed to supervise the sales activities and conduct of Florida Discount's registered representatives and associated persons. The findings also stated that Rich failed to respond to NASD requests for information. (NASD Case # CMS040094)

**Magellan Securities Inc. (CRD #15986, Harper Woods, Michigan) and Terry Michael Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan)** submitted an Offer of Settlement in which the firm was expelled from NASD membership and Laymon was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the firm and Laymon consented to the described sanctions and to the entry of findings that the firm permitted Laymon to be associated as its president and sole owner requiring him to act in a principal capacity while he was subject to "disqualification" as defined in Article III, Section 4 of NASD By-laws. The findings stated that Laymon intentionally, recklessly, or negligently created false account statements with incorrect or inflated valuations to induce a public customer to continue to maintain accounts with the firm. The findings also stated that the firm, acting through Laymon, failed to qualify and register as a person associated with the firm, a financial and operations principal, or an introducing broker-dealer financial and operations principal. In addition, the findings stated that the firm permitted Laymon to perform duties as a general securities principal while his registration status with NASD was inactive due to his failure to complete in a timely matter the Regulatory Element of NASD's Continuing Education Requirement. The findings further stated that the firm, acting through Laymon, failed to file 3070 reports disclosing reportable events and failed to amend Form BD and Form U4 to report these disciplinary actions. NASD found that Laymon failed to respond completely and timely to NASD requests for information. (NASD Case #C8A030081)

## Firms Fined, Individuals Sanctioned

Hennion & Walsh, Inc. (CRD #1315386, Parsippany, New Jersey), Richard Hennion (CRD #13153586, Registered Representative, Totowa, New Jersey), and William Walter Walsh (CRD #1174993, Registered Principal, Mountain Lakes, New Jersey) were fined \$40,000, jointly and severally. Hennion was also fined \$35,000, suspended from association with any NASD member in all capacities for four months, and required to requalify in all capacities. Walsh was fined \$25,000, suspended in all supervisory capacities for four months, and required to requalify in all principal capacities. In addition, Hennion & Walsh, Inc., was fined \$10,000 and ordered to retain an independent consultant approved by NASD to review its written policies and procedures and to prepare and submit to NASD a report setting forth the consultant's recommendations and the firm's actions to implement those recommendations. The sanctions were based on findings that the firm failed to have reasonable supervisory systems and procedures. The findings also stated that Walsh failed to exercise reasonable supervision over Hennion. The findings further stated that Hennion made unsuitable recommendations to a public customer and exercised discretion in the customer's account without written authorization.

Walsh's suspension will begin July 18, 2005, and end at the close of business November 17, 2005. Hennion's suspension began March 7, 2005, and will end at the close of business July 6, 2005. (NASD Case # C9B040013)

## Firms Fined

Calyon Securities (USA) Inc. (CRD #190, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise within 30 business days its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. The findings also stated that the firm failed to report to TRACE transactions in TRACE-eligible securities within 75 minutes after execution. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning ACT reporting. (NASD Case #CLG050013)

Citigroup Global Markets Inc. (CRD #7059, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$107,500, and required to pay \$1,706.01 in restitution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities. The findings also stated that the firm, in transactions with public customers, failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. NASD found that the firm executed short sale transactions in certain securities, all of which were NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. NASD found that the firm submitted to NASD inaccurate short interest position reports. In addition, NASD found that the firm failed to provide written notification disclosing to its public customers its correct market maker status in each such security. The findings also stated that the firm failed to provide written notification disclosing to its public customer its correct capacity in transactions. NASD found that the firm incorrectly reported to ACT the second leg of "riskless" principal transactions in NNM and NASDAQ SmallCap<sup>SM</sup> securities, and incorrectly designated the capacity of such transactions as principal. The findings also state that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation. (NASD Case #CLG050004)

GFI Securities LLC (CRD #19982, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise within 30 business days its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning ACT reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and rules of NASD concerning ACT reporting. (NASD Case #CLG050012)

GVR Company LLC (CRD #111528, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$65,000, and required to pay \$12,280.91, plus interest, in restitution to the parties

involved in transactions. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed orders at a price that was inferior to the national best bid and offer at the time of execution. The findings also stated that the execution quality provided to the orders was inconsistent with just and equitable principles of trade. **(NASD Case #CLG050014)**

**Perrin, Holden & Davenport Capital Corp. (CRD #38785, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$22,500, and required to revise within 30 business days its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning limit order display, quote rules, short sale rules, and SEC Rule 11Ac1-6. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to show the correct time of execution, the time of entry, and the terms and conditions on the memorandum of brokerage orders. The findings also stated that the firm failed to make publicly available a report on its routing of non-directed orders in covered securities. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning limit order display, quote rules, short sale rules, and SEC Rule 11Ac1-6. **(NASD Case #CLG050008)**

**Susquehanna Capital Group (CRD #29337, Bala Cynwyd, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$37,500, and required to revise within 30 business days its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning aspects of trade reporting, including the 20-minute rule, late trade reporting, and accurate use of trade reporting modifiers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, and whether transactions were buy, sell, sell short, sell short exempt, or cross.

NASD also found that the firm failed to report the time of execution through ACT for last sale reports of transactions. The findings also stated that the firm improperly submitted to ACT cancellation reports in eligible securities, and failed to submit required information to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) for orders and transmitted reports that contained inaccurate, incomplete, or improperly formatted data. In addition, NASD determined that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. NASD found that the firm failed,

within 90 seconds after execution, to transmit through ACT last sale reports of transactions, and failed to designate as late last sale reports, in NNM securities, NASDAQ SmallCap securities, and eligible securities. NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning aspects of trade reporting including the 20-minute rule, late trade reporting, and accurate use of trade reporting modifiers. **(NASD Case #CLG050010)**

**Trident Partners, Ltd. (CRD #41258, Jericho, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to comply with SEC Rule 15c2-4, in that the firm did not set up a bank escrow account in connection with a contingency offering of an affiliated issuer and permitted excessive commissions to be charged in agency transactions and excessive markups to be charged in principal transactions. The findings also stated that Trident effected transactions in corporate debt securities during a time when its membership agreement had not been amended to include corporate debt securities as a business line. In addition, NASD determined that Trident failed to receive required notifications from the Financial Crimes Enforcement Network (FinCen) because the firm failed to update its primary anti-money laundering (AML) contact with NASD. The findings also included that the firm failed to conduct required independent testing of its AML compliance program. **(NASD Case #CLI1050001)**

**Kenneth Steven Stovall (CRD #1068508, Registered Representative, Hillsborough, California)** submitted an Offer of Settlement in which he was censured and fined \$10,000. Without admitting or denying the allegations, Stovall consented to the described sanctions and the entry of findings that he exercised discretion in the accounts of public customers without obtaining written authorization from the customers and acceptance of the account by his member firm. **(NASD Case #C01040018)**

## Individuals Barred or Suspended

**Peter T. Antipatis (CRD #2955420, Registered Representative, Coral Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Antipatis consented to the described sanctions and to the entry of findings that he circulated false and misleading investment opinions and research reports, which included fraudulent and deceptive representations and omissions of

material facts about speculative, low-priced securities that were promoted by a stock promotion and public relations firm for which he worked and from which he received a salary. NASD also found that Antipatis did not include financial information about companies he covered in his investment opinions and failed to disclose material negative information about the companies that he covered.

The findings also stated that Antipatis' investment opinions were not based on principals of fair dealing and good faith, were not fair and balanced, and did not provide a sound basis for evaluating the facts in regard to any particular security or type of security. In addition, NASD found Antipatis omitted material facts or qualifications that, in light of the context of the material presented, caused the communications to be misleading. The findings also indicated that Antipatis made false, exaggerated, unwarranted, or misleading statements or claims in his communications with the public. The findings also included that Antipatis published, circulated, or distributed public communications, or caused such public communications to be published, circulated, or distributed, that he knew or had reason to know contained untrue statements of material fact or were otherwise false or misleading. In addition, NASD found that Antipatis, in his communications with the public, predicted or projected performance, implied that past performance will recur, or made exaggerated or unwarranted claims, opinions, or forecasts. NASD also found that Antipatis' investment opinions or research reports contained only favorable research, opinions, or news about the companies he covered and that Antipatis directly or indirectly offered the favorable research report and a specific rating as consideration or inducement for the receipt by him of business or compensation. Moreover, NASD determined that Antipatis was registered with a member firm for the sole purpose of avoiding a lapse in his registration and re-examination requirements.

The findings also stated that Antipatis failed to provide prompt written disclosure to his member firm that he was working for, and being compensated by, a company for writing investment opinions and research reports. Antipatis did not disclose the true nature of his work and deceived his member firm into believing that his outside employment was not investment related. The findings also stated that Antipatis failed to notify his member firm, in writing, of his securities accounts at another member firm, and failed to notify a member firm of his associated status with another member firm. (NASD Case #CMS040204)

**Rafael Ernesto Avila (CRD #4341162, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Avila consented to the described sanction and to the entry of findings that he

received \$92,000 from public customers to invest in securities for the customers, but failed to follow the customers' instructions and converted the funds to his own use and benefit. The findings stated that Avila owned or maintained control over two brokerage accounts at an NASD member firm, but failed to disclose his association with his member firm to the firm carrying the accounts, and failed to disclose the existence of the accounts to his member firm. The findings also stated that Avila failed to provide prompt written notice to his member firm that he was employed by, or received compensation from, an outside business activity. (NASD Case #C07050009)

**Robert Roger Beuret (CRD #20718, Registered Representative, Fort Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Beuret consented to the described sanction and to the entry of findings that he failed to exercise due care to prevent the sale of unregistered securities to the public.

Beuret's suspension began February 22, 2005, and concluded at the close of business March 7, 2005 (NASD Case #CE3050001)

**John Edward Brigandi (CRD #1388900, Registered Representative, Greenvale, New York)** was barred from association with any NASD member in any capacity and ordered to pay costs in the amount of \$2,403.94. The sanction was based on findings that Brigandi's recommendations and trading activity in the account of a public customer were unsuitable and excessive given the customer's financial situation, needs, and objectives. NASD determined that Brigandi's conduct was egregious in that he acted recklessly and without regard for his customer's best interests.

Brigandi has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10040025)

**Gilbert Alan Cardillo (CRD #1110960, Registered Principal, Riverhead, New York)** was fined \$6,600, suspended from association with any NASD member in all capacities for 10 business days, and ordered to offer to pay a public customer, upon the customer's surrender of his certain annuity certificate. The sanctions were based on findings that Cardillo made an unsuitable recommendation to a public customer without having reasonable grounds for believing that his recommendation of a variable annuity was suitable for the customer, and that he failed to obtain relevant information concerning the suitability of his recommendation before executing the transaction, particularly concerning the



customer's need for liquidity and income, and the customer's lack of investment sophistication and inability to monitor the sub-accounts.

Cardillo's suspension began February 21, 2005, and concluded March 4, 2005. **(NASD Case #C10030087)**

**Kenneth Joseph Clairmont, Jr. (CRD #4107628, Registered Representative, Albany, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for three months, ordered to disgorge \$25,000 received in connection with the securities sales, and pay partial restitution, plus interest. The fine and restitution must be paid before Clairmont reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Clairmont consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Clairmont's suspension began April 4, 2005, and will conclude July 3, 2005. **(NASD Case #C11050003)**

**Paul Conte (CRD #3094358, Registered Representative, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Conte consented to the described sanction and to the entry of findings that he falsified letters of authorization related to public customers who shared a joint account by cutting and pasting their signatures onto the letters of authorization.

Conte's suspension began April 4, 2005, and will conclude at the close of business April 22, 2005. **(NASD Case #C10050003)**

**Chris Herbert Craig (CRD #1623738, Registered Representative, Fenton, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Craig reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Craig consented to the described sanctions and to the entry of findings that he failed to respond in timely manner to NASD requests for documents and information.

Craig's suspension began April 4, 2005, and will conclude at the close of business May 13, 2005. **(NASD Case #C8A050014)**

**Massimo Fabio Colella (CRD #4145734, Registered Representative, Hagerstown, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Massimo consented to the described sanction and to the entry of findings that he charged a personal expense, or caused a personal expense to be charged, to a personal credit card owned by a business associate, who was also a co-worker, without that person's knowledge or authorization. NASD also found that Colella willfully failed to disclose material facts on a Form U4. **(NASD Case #C9A050004)**

**James Michael Coyne, Sr. (CRD #601719, Registered Principal, Media, Pennsylvania)** was fined \$10,000, required to pay costs of \$4,070.80, and suspended from association with any NASD member in any capacity for four months. The sanctions were based on findings that Coyne engaged in excessive trading in public customer accounts that conflicted with his customer's financial needs and investment objectives. NASD found that Coyne engaged in the short-term purchase and sale of securities without having a reasonable basis for believing that such transactions were suitable based upon the frequency of the transactions, the nature of account, and financial situation and needs of public customers. In addition, NASD found Coyne made unsuitable use of margin in the account of public customers.

Coyne's suspension began February 22, 2005, and will conclude at the close of business June 21, 2005. **(NASD Case #C9A030041)**

**Daniel Quinn Dellinger (CRD #2343092, Registered Representative, Glenview, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Dellinger reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dellinger consented to the described sanctions and to the entry of findings that he engaged in outside business activities, received \$15,287 in compensation, and failed to provide written notice to his member firm of his intent to engage in such activities.

Dellinger's suspension began April 4, 2005, and will conclude at the close of business April 22, 2005. **(NASD Case #C8A050010)**

**Jody Charles Dobrinich (CRD #4331720, Associated Person, Stauntun, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any

capacity for one year. The fine must be paid before Dobrinich reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dobrinich consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Dobrinich's suspension began April 4, 2005, and will conclude April 3, 2006. (NASD Case #C8A050015)

**Stewart Reed Ford (CRD #2382297, Registered Representative, Dana Point, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$47,253 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Ford reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ford consented to the described sanctions and to the entry of findings that he participated in private securities transactions, received \$42,253 in commissions, and failed to provide prior written notice to, and receive prior written approval from, his member firm.

Ford's suspension began April 4, 2005, and will conclude April 3, 2007. (NASD Case #C02050012)

**Jay James Gianni (CRD #2134234, Registered Representative, Lancaster, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity with a right to reapply after five years. Without admitting or denying the allegations, Gianni consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm. (NASD Case #C8A050011)

**Alvin Edwin Gramentz (CRD #720914, Registered Principal, Bonita Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gramentz consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04050007)

**Jason William Gregg (CRD #4486108, Registered Representative, Bear, Delaware)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gregg consented to the described sanction and to the entry of findings that he was identified in the records of a bank

affiliated with his member firm as a co-owner of bank accounts maintained at the bank and caused sham service fee refunds to be credited to the accounts. The findings also stated that Gregg made various withdrawals from the accounts totaling \$2,160, and used the funds for his own benefit. (NASD Case #C9A050006)

**Roger Grieco (CRD #3124651, Registered Representative, Greenvale, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 45 days. The fine shall be due and payable either immediately upon reassociation with a member firm following the suspension, prior to any application, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Grieco consented to the described sanctions and to the entry of findings that he effected a private securities transaction away from his member firm by facilitating an investment in a \$50,000 promissory note for public customers. NASD found that Grieco failed to provide written notification to his member firm prior to effecting the transaction.

Grieco's suspension began April 4, 2005, and will conclude at the close of business May 18, 2005. (NASD Case #C10050006)

**Pany Chan Keo (CRD #2659272, Registered Representative, Long Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Keo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Keo consented to the described sanctions and to the entry of findings that he owned or maintained control over a brokerage account at an NASD member firm, but failed to disclose his association with his member firm to the firm carrying the accounts and failed to disclose the existence of the account to his member firm.

Keo's suspension began April 4, 2005, and concluded at the close of business April 22, 2005. (NASD Case #C02050014)

**Larry King Jr. (CRD #2702152, Registered Representative, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, King consented to the described sanction and to the entry of findings that he misused a public customer's bank account funds in that he induced the customer to sign, unknowingly, withdrawal slips and a certified check request form, and made \$75,409.59 in withdrawals from customer's account and used the funds for a purpose other

than the benefit of the customer for a period of time before returning the funds to the customer. The findings also stated that King failed to respond to NASD requests for documents and information. (NASD Case #C8A050012)

**Suk Hun “John” Ko (CRD #2786161, Registered Representative, La Crescenta, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Ko reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ko consented to the described sanctions and to the entry of findings that he sent reports and letters to public customers that contained improper predictions of returns with respect to stocks and mutual fund investments, and other misleading and exaggerated statements.

Ko’s suspension began April 4, 2005, and will conclude April 3, 2006. (NASD Case #C02050011)

**Nathan Gerald Kroening (CRD #2332862, Registered Representative, Two Rivers, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Kroening reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kroening consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to the “W-9 Information” portion of the account worksheet form without the customer’s consent.

Kroening’s suspension began April 4, 2005, and will conclude at the close of business June 2, 2005. (NASD Case #C8A050013)

**Jayne Alexander Kurtyka (CRD #1171623, Registered Representative, West Chicago, IL)** submitted an Offer of Settlement in which he was fined \$17,500, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by examination as a Series 7 General Securities Representative within 90 days after the date of the order, or he will cease to act in such capacity until he has requalified as a Series 7 General Securities Representative. Without admitting or denying the allegations, Kurtyka consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer, including purchasing securities on a margin, without having a reasonable basis for believing that the recommendations and

resultant transactions were suitable for the customer based upon the customer’s age, total net worth, liquid net worth, investment experience, financial situation, and investment objectives.

The findings also stated that Kurtyka exercised discretion in the account of a public customer without obtaining written authorization from the customer and written acceptance of the account as discretionary by his member firm. In addition, the findings stated that Kurtyka prepared, or caused to be prepared, and mailed, or caused to be mailed, a form letter considered by NASD to be sales literature that was not fair and balanced and omitted material facts or qualification, causing the form letter to be misleading. The findings further stated that the form letter also failed to disclose the material differences between the general nature of the fund’s portfolio and the securities indexes against which it was compared.

Kurtyka’s suspension began April 4, 2005, and will conclude at the close of business May 3, 2005. (NASD Case #CAF040067)

**Kyong K. Lee (CRD #2926153, Registered Representative, Virginia Beach, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he caused funds to be withdrawn from a public customer’s variable annuity, deposited these funds into his bank account, and then lent the funds to a third party without the authorization of the customer. (NASD Case #C9A050007)

**Philip Allen Lehman (CRD #1345038, Registered Principal, Englewood, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lehman failed to respond to NASD requests for documents and information, and to appear to provide testimony. (NASD Case #C8A040060)

**Arthur Conrad Levy (CRD #2199632, Registered Principal, Palm Beach Gardens, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Levy consented to the described sanction and to the entry of findings that, in connection with class B share liquidations for public customers, he falsified firm records by entering codes into his firm’s computer system that falsely indicated that the customers had died or were disabled, which had the effect of waiving the CDSC charges for customers when they were not entitled to the waiver. (NASD Case #C07050011)

**Mark Larry Lewis (CRD #1901446, Registered Principal, West Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Lewis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the securities account of a public customer by exercising discretionary power in those accounts without having obtained the customer's and his member firm's prior written authorization.

Lewis' suspension began April 4, 2005, and will conclude at the close of business May 13, 2005. (NASD Case #C02050010)

**Chantha Owen Lueung (CRD #2839141, Registered Principal, Yonkers, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lueung consented to the described sanctions and to the entry of findings that he fraudulently recommended and sold the securities of a certain company to public customers. NASD found that Lueung told his customers that he conducted an appropriate investigation and reasonable due diligence into the company, but failed to do so. The findings also stated that Lueung made material misrepresentations about the company's securities and failed to disclose material adverse facts that he was or should have been aware of, including the company's financial condition. NASD also found that Lueung made statements about the company and its business, including stock price projections and guarantees, for which he had no basis. (NASD Case #CLG050016)

**Edward Alan Martin (CRD #2193457, Registered Principal, Franklin, Tennessee)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martin consented to the described sanction and to the entry of findings that he converted a public customer's funds to his own use and benefit without the customer's knowledge or consent. (NASD Case#C05040084)

**Mark Edward McCaffrey (CRD #1811502, Registered Representative, Rockville, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCaffrey consented to the described sanctions and to the entry of findings that he received a check totaling \$500,000 from a public customer for investment purposes, deposited

the check to a personal bank account, and used the funds for his own benefit. NASD also found that McCaffrey failed to respond to NASD requests for information. (NASD Case #C9A050005)

**Pierre Michael Mikhail (CRD #2816910, Registered Representative, Alta Loma, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Mikhail reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mikhail consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, the purchase of a whole life insurance policy for a public customer without the customer's knowledge or consent.

Mikhail's suspension began April 4, 2005, and will conclude April 3, 2007. (NASD Case #C02050015)

**Mark Francis Mizenko (CRD #1812411, Registered Representative, Kent, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Mizenko committed forgery by tracing a corporate officer's name onto a document without his knowledge or permission and by using his notary seal to affix a purported corporate seal onto a document.

This decision has been appealed to the SEC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C8B030012)

**Kyle William Morgan (CRD #2610322, Registered Representative, St. Augustine, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Morgan consented to the described sanctions and to the entry of findings that he exercised discretionary trading authority in a public customer's accounts without obtaining the customer's prior written authorization and his member firm's prior written acceptance of the accounts as discretionary.

Morgan's suspension began March 28, 2005, and concluded at the close of business April 8, 2005. (NASD Case #C07050010)

**Richard Francis O'Leary (CRD #1096188, Registered Principal, Newport Beach, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that O'Leary failed to respond completely to NASD requests for information and failed to appear for an on-the-record interview. (NASD Case #C02040035)



**Christopher Joseph Preisero (CRD #2871086, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any and all capacities for 35 days. Preisero consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Preisero's suspension began April 4, 2005, and will conclude May 8, 2005. **(NASD Case #C10050005)**

**Michael B. Reynolds (CRD #4721573, Associated Person, Lighthouse Point, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on finding that Reynolds stole a check from his supervisor, forged the supervisor's signature on the check, and converted the funds to his own use and benefit without his supervisor's knowledge or authorization. The findings also stated that Reynolds failed to respond to NASD requests for information. **(NASD Case #C07040069)**

**Dennis Roy Roth (CRD #1418538, Registered Principal, Rockville, Maryland)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Roth consented to the described sanction and to the entry of findings that he issued a research report in which he recommended the purchase of an OTC Bulletin Board-traded company, which contained baseless and exaggerated sales projections, price predictions, and an unsupported claim that the company would achieve profitability. In addition, NASD found that Roth failed to disclose that he was being paid by the company in cash and securities to promote the company and to solicit investors to purchase its securities at the time of the issuance of the research report. **(NASD Case #CMS040016)**

**Patrick Frank Santullo (CRD #410800, Registered Representative, Hebron, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$8,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Santullo consented to the described sanctions and to the entry of findings that he erroneously executed purchases in the trust account of a public customer that exceeded the available assets of the account. The findings also stated that Santullo sold the overbought securities from the trust account, causing the customer to bear the loss of the diminished value of the securities and to pay the commissions for the purchase and sale of the securities. In addition, NASD determined that Santullo executed unauthorized sales of securities in a trust

account, whose beneficiary was a public customer, without the knowledge or consent of the customer or the account trustees.

Santullo's suspension began April 4, 2005, and will conclude at the close of business April 22, 2005. **(NASD Case #C05050007)**

**Abraham Schiller (CRD #2375377, Registered Representative, Tamarac, Florida)** was barred from association with any NASD member in any capacity and ordered to pay \$55,077.19, plus interest, in restitution to his member firm. The sanctions were based on findings that Schiller entered fictitious contribution changes into his firm's computer system falsely representing that plan participants had increased their periodic contributions into their retirement plans. The findings stated that Schiller made other entries into the firm's system to attempt to conceal his unearned commissions totaling \$55,077.19, and prevent his firm from reversing the commissions to which he was not entitled. The findings also stated that Schiller failed to respond to NASD requests for information and to appear for an on-the-record interview. **(NASD Case #C07040080)**

**Barry Leonard Schwartz (CRD #1034556, Associated Person, Huntington, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Schwartz failed to appear for an NASD on-the-record interview. **(NASD Case #CMS040104)**

**Lawrence Bryan Schweiger (CRD #736288, Registered Principal, Plantation, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schweiger consented to the described sanction and to the entry of findings that he participated in private securities transactions, and failed to provide prior written notice to, and receive prior written approval from, his member firm. **(NASD Case #C07050012)**

**David Joseph Shaw (CRD #1003961, Registered Principal, Indianapolis, Indiana)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shaw consented to the described sanction and to the entry of findings that, without the knowledge or consent of a public customer, he transferred \$977,547 in funds from customer's accounts into accounts under his control, and used the funds for his own use and benefit and not the use or benefit of the customer. The findings stated that Shaw, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud public

customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements not misleading. The findings also stated that, after listening to the representations made by Shaw, customers invested \$336,000, and, without their knowledge or consent, Shaw used these funds to his own use and benefit and not the use or benefit of the customers. NASD found that Shaw affixed the signatures of public customers on the firm's "Authority to Transfer Funds" forms and submitted the forms to his firm authorizing the transfer of \$50,000 from the accounts of public customers to an account he controlled, and, without the knowledge or consent of the customers, used these funds for his own use or benefit and not the benefit of the customers. NASD also found that Shaw failed to respond to NASD requests for information. (NASD Case #C8A040121)

**Scott Stern (CRD #1581268, Registered Representative, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stern consented to the described sanction and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having a reasonable basis for believing that his recommendations and transactions were suitable based on the customer's objectives, financial situation, and needs. The findings stated that Stern exercised discretionary trading authority in public customers' accounts without obtaining the customers' prior written authorization and his member firm's prior written acceptance of the accounts as discretionary. The findings further stated that Stern effected unauthorized trades in the accounts of public customers and settled a customer complaint for \$10,000 without his firm's knowledge or approval. (NASD Case #C02050008)

**Robert John Vitale (CRD #2695384, Registered Representative, Parkland, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vitale consented to the described sanction and to the entry of findings that he participated in fraudulent and deceptive devices and contrivances involving trading in stocks through the use of interstate commerce, the mails, or a facility of a national securities exchange. NASD also found that Vitale failed to appear and testify as requested by NASD. (NASD Case #C05050006)

## Decisions Issued

**Patrick Orvil Nugent (CRD #1498083, Registered Principal, Sunnyvale, California)** was barred from association with any NASD member in any capacity. The sanction is based on findings that Nugent engaged in private securities transactions without giving prior written notice to, or receiving prior approval from, his member firm.

This decision has been appealed to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C01040010)

**Robert Michael Ryerson (CRD #1224662, Registered Principal, Freehold, New Jersey)** was fined \$230,000, suspended for two years in all capacities from association with any NASD member, and required to requalify in all capacities. These sanctions were based on findings that Ryerson participated in the sale of securities without providing prior written notice to, and obtaining prior written approval from, his member firm. Ryerson was also suspended from association with any NASD member in all capacities for 15 business days and fined \$5,000 based upon a finding that he shared commissions with a non-NASD member. Ryerson was further suspended for one year from associating with any NASD member in all capacities, and fined \$10,000 for failing to timely appear for an NASD on-the-record interview. The suspensions are to run concurrently.

The decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9B040033)

## Complaints Filed

NASD issued the following complaints. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Nicholas Apodiakos (CRD #1595927, Registered Representative, Brighton, Massachusetts)** was named as a respondent in an NASD complaint alleging that he instructed a public customer to withdraw \$60,000 from the customer's brokerage account, recommended that she purchase a "private investment" offering a 10 percent tax-free return over

a one-year period, and instructed the customer to make the checks payable to a third party. The complaint alleges that Apodiakos did not use the funds to purchase the tax-free investment; instead, the third party cashed the checks and split the proceeds with Apodiakos. The complaint further alleges that Apodiakos instructed the customer to sell shares in a mutual fund in order to make an additional purchase of the tax-free investment, and to make a \$19,000 check payable to a third party to purchase the tax-free investment; however, the funds were not used to purchase the investment as the customer intended, and the third party cashed the check and gave at least some of the proceeds to Apodiakos. (NASD Case #C11050002)

**William Edward Kassar, Jr. (CRD #2245223, Registered Principal, Lattingtown, New York) and Reid Steven Malvin (CRD #4550756, Registered Representative, Glen Cove, New York)** were named as respondents in an NASD complaint alleging that they intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleged that Kassar and Malvin acted without regard for public customers' investment objectives, financial resources, and the character of the customers' accounts. The complaint further alleged that the respondents did not have a reasonable basis to believe that their recommendations and the resulting transactions were suitable for the public customers in light of the customers' financial situations, investment objectives, and needs. The transactions resulted in concentrated positions in individual speculative stocks that were inappropriate for the customers. The complaint also alleged that Kassar effected, or caused to be effected, trades in a public customer's account, without the customer's prior knowledge or consent. The complaint alleged that Kassar and Malvin conducted trades in a public customer's account on margin despite the fact that there was no margin agreement. In addition, the complaint alleged that Kassar took actions to settle a public customer's complaint without the knowledge or consent of his member firm. The complaint further alleged that Kassar provided false, deceptive, inaccurate, and/or incomplete testimony to NASD during an on-the-record interview. (NASD Case #CL1050003)

**Darwin Raul Martinez (CRD #1493059, Registered Representative, Queens Village, New York)** was named as a respondent in an NASD complaint alleging that he stole property from public customers of his member firm having a value totaling \$6,000. (NASD Case #C10050004)

## **Firms Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Bancshares First**  
Dublin, Ohio  
(February 24, 2005)

**Clark Street Capital, Inc.**  
Levittown, New York  
(February 24, 2005)

**F1 Trading.Com, Inc.**  
Mineola, New York  
(February 24, 2005)

**Hanmi Securities, Inc.**  
Los Angeles, California  
(February 24, 2005)

## **Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210**

**Jeffrey King**  
Sellersburg, Indiana  
(February 25, 2005)

**Darla Jade Shih-Hseih**  
Delray Beach, Florida  
(February 24, 2005)

## **Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Eul Hyung Choi**  
Los Angeles, California  
(February 24, 2005)

**Frank Thomas Devine**  
Oswego, Illinois  
(February 24, 2005)

**Albert Anthony Schneck, Jr.**  
Staten Island, New York  
(February 24, 2005)

**Thomas Andrew Timberlake**  
Tampa, Florida  
(February 24, 2005)

### **Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Andrew Nelson Finder**  
Tampa, Florida  
(February 25, 2005)

**Phillip St. Jean Keegan**  
Mill Valley, California  
(February 24, 2005)

### **Florida Brokerage Firm LH Ross Expelled, Owner Franklyn Michelin Barred for Life to Settle NASD Charges of Widespread, Ongoing Fraud**

**Brokerage, Michelin Withdraw Appeals of Prior Hearing Panel Decisions; Previously Ordered Sanctions, Including over \$11 Million in Restitution, Remain in Force**

NASD has expelled Boca Raton, FL-based brokerage firm LH Ross & Company, Inc., from the securities industry and barred its owner and president, Franklyn Michelin, for life to resolve charges of manipulation, fraud, excessive markups, sales of unregistered securities, books and records violations, and supervisory violations in two pending enforcement actions against the firm. Both matters were scheduled to go before NASD hearing panels.

As part of the settlement, LH Ross and Michelin agreed to withdraw their appeals of three previous NASD hearing panel decisions that found, among other things, that LH Ross had engaged in widespread fraud in the sales of unregistered securities in multiple self-offerings and that LH Ross and Michelin had failed to cooperate with NASD investigators. Those previous decisions collectively imposed sanctions that included expelling LH Ross (twice), barring Michelin, ordering the payment of more than \$11.45 million in restitution to harmed investors, and imposing \$550,000 in fines. Those sanctions are now final.

In recent months, NASD has used two of its emergency powers for the first time to protect investors from LH Ross's ongoing fraudulent and illegal sales activities by issuing its first temporary cease-and-desist order in August 2004, and its first summary suspension of a securities firm in February 2005.

"Using its cease-and-desist authority, NASD put an immediate halt to the firm's continuing fraudulent sales activity," said NASD Vice Chairman Mary L. Schapiro. "Later, NASD used its summary suspension authority to halt the firm's remaining operations. Through its vigilance and dedication to investor protection, NASD succeeded in bringing this fraudulent enterprise to an end."

At its peak, LH Ross operated 17 branch offices around the country and employed approximately 180 brokers.

As part of its settlement with NASD, LH Ross and Michelin have also agreed to:

- Provide, within 60 days, a complete and accurate sworn accounting of the use of proceeds raised in the 2003 and 2004 self-offerings of preferred LH Ross stock. The accounting must detail the precise amounts raised in the self-offerings; every deposit and disbursement of those funds; every movement of those funds after their initial deposit into an account; and the identity and contact information for every investor in the preferred stock, along with the amounts of their investments.
- Execute consent directives giving NASD direct access to LH Ross's and Michelin's bank account records.
- Cooperate in NASD's ongoing investigation of individual LH Ross brokers, as well as any other investigation or disciplinary proceeding concerning monies raised through the 2003 and 2004 preferred stock offerings.

The two pending cases resolved in the settlement involve:

- The "pump and dump" manipulation in 2003 of the common stock of Trident Systems International, Inc., a shell company with virtually no assets or operating history. NASD found that LH Ross and Michelin engaged in an unregistered distribution of Trident stock, using fraudulent sales practices that included unauthorized trading, failure to execute customer sell orders, and material misrepresentations and omissions of material facts. NASD also found that LH Ross and Michelin charged customers fraudulent and excessive markups.
- Fraudulent trading of six stocks on five trading days in 2003 that generated more than \$360,000 in immediate financial gains. NASD found that LH Ross, Michelin, and two LH Ross brokers would identify a stock that had declined significantly during the course of a trading day, acquire a block of that stock late in the afternoon, and then sell the stock to unsuspecting retail customers at the stock's earlier, higher price. To facilitate the scheme, they falsified order tickets by time-stamping them early in the trading day.



LH Ross and Michelin have withdrawn their appeals of NASD hearing panel decisions in these cases:

- On January 14, 2005, an NASD hearing panel expelled LH Ross from the securities industry for fraud and other violations related to its sales of unregistered preferred stock self-offerings in 2003 and 2004. At least 150 investors in 27 states purchased the preferred stock. Saying LH Ross's fraud had caused "widespread, significant, and identifiable customer harm" and calling future sales solicitations by the firm an "extreme threat to the investing public," the hearing panel also fined the firm \$500,000 and ordered it to pay restitution and interest of more than \$11.45 million. It also imposed a permanent cease-and-desist order to replace the temporary order that had been in place since August 31, 2004.
- On January 25, 2005, in a separate disciplinary proceeding against the firm and Michelin, an NASD hearing panel expelled LH Ross and barred Michelin for failing to provide requested information to NASD investigators and thus impeding an NASD investigation.
- On December 15, 2004, a hearing panel found that LH Ross and Michelin had failed to pay an arbitration award and had filed a meritless defense in opposing NASD Dispute Resolution's suspension notice for that failure to pay. The panel ordered LH Ross and Michelin to pay nearly \$70,000 in restitution to the arbitration claimant, fined them \$50,000, and suspended Michelin for six months.

The brokerage is also at the center of numerous state disciplinary actions. Citing a variety of securities violations, regulators in Texas, Connecticut, New Hampshire, and Maine have revoked LH Ross's licenses to do business in their states. Utah regulators recently issued an emergency order suspending LH Ross's license, while regulators in Colorado have scheduled an April 8 hearing on possible revocation of the firm's license.

LH Ross and Michelin settled the two pending enforcement actions without admitting or denying the allegations, but consented to the entry of NASD's findings. By withdrawing their appeals of the prior hearing panel decisions, LH Ross and Michelin are no longer challenging the findings of fraud and other violations in those cases.

NASD's investigation of individuals associated with LH Ross and their fraudulent sales activities is continuing.

### **Thomas Weisel Partners to Pay \$1.75 Million to Settle NASD Charges of IPO, E-Mail Retention Violations**

NASD ordered Thomas Weisel Partners of San Francisco, CA to pay \$1.75 million for engaging in improper initial public offering (IPO) allocation practices and for failing to retain e-mails. That total represents \$1.3 million in ill-gotten profits and an additional \$450,000 fine.

NASD found that during 1999 and 2000, Weisel received unusually high commissions from certain institutional customers within one day of Weisel's allocating shares of hot IPOs to those customers. The firm accepted these commissions, which were sometimes more than \$1 per share, in connection with institutional-sized agency trades in highly liquid securities. These commissions were far in excess of a typical rate of \$.06 per share for such transactions, and the services Weisel provided did not justify the excessive commission amounts that were paid. Despite the receipt of such excessively high commissions, Weisel made no inquiries into the transactions.

"There was no legitimate reason to pay hundreds of thousands of dollars more than other firms would have charged to carry out routine trades," said NASD Vice Chairman Mary L. Schapiro. "By accepting high payments under these circumstances, Thomas Weisel Partners failed to observe the high standards of commercial honor and just and equitable principles of trade demanded by NASD rules."

NASD found that Weisel was an active manager of underwritings during the Internet boom and participated in a number of hot IPOs during the period at issue. Many of those IPOs exhibited price increases of more than 100 percent over the public offering prices at the opening of trading on the first day. Customers who were successful in obtaining IPO shares from Weisel in such offerings stood to make significant profits by selling those shares in the immediate aftermarket.

NASD found that in nine transactions on one day—March 3, 2000—three customers paid Weisel over \$1.2 million in unusually high commissions to execute institutional-sized trades in liquid securities at commission rates of \$1 per share and above. At \$.06 per share, commissions for the transactions would have totaled just \$122,400. On the same day, the customers received large allocations of two hot IPOs.

NASD found that one of those customers paid Weisel \$670,800 in commissions on two trades—at commission rates of \$1.08 per share and \$1.20 per share. These payments

resulted in commissions \$635,400 greater than if the customer had paid a commission of \$.06 per share. On the same day, the customer received allocations of 58,000 shares of an IPO that increased more than 286 percent from the public offering price on that day, and 1,000 shares of an IPO that increased more than 139 percent from its public offering price. Had the customer sold the IPO shares at the close of trading on the day of the IPO, the customer would have realized profits of over \$4 million.

NASD also found that, from January 1999 through the third quarter of 2001, Weisel violated recordkeeping rules by failing to ensure that e-mails were kept for the required minimum three-year period. Under Weisel's system, the firm's employees could permanently delete e-mails from the firm's e-mail system, and the firm lacked an adequate mechanism to save internal e-mail for associated persons. As a result, Weisel was unable to produce all of its e-mails to NASD.

In settling with NASD, Weisel neither admitted nor denied the charges, but they consented to the entry of NASD's findings.

### **NASD Fines Citigroup Global Markets, American Express, and Chase Investment Services More Than \$21 Million for Improper Sales of Class B and C Shares of Mutual Funds**

#### **Firms to Offer Remediation on over 275,000 Transactions to over 50,000 Households**

NASD censured and fined Citigroup Global Markets, Inc., American Express Financial Advisors, and Chase Investment Services a total of \$21.25 million for suitability and supervisory violations relating to mutual fund sales practices between January 2002 and July 2003. These cases are part of a larger, ongoing investigation into mutual fund sales practices.

The cases against Citigroup and Chase involve their recommendations and sales of Class B and Class C shares of mutual funds, while the action involving American Express relates only to Class B shares. In all three cases, the firms made recommendations and sales of mutual funds to their customers without considering or adequately disclosing, on a consistent basis, that an equal investment in Class A shares would generally have been more economically advantageous for their customers by providing a higher overall rate of return. The firms also had inadequate supervisory and compliance policies and procedures relating to these mutual fund sales.

In particular, NASD found that the firms did not consistently consider that large investments in Class A shares of mutual funds entitle customers to breakpoint discounts on sales charges, generally beginning at the \$50,000 investment level, which are not available for investments in other share classes.

Investors may be entitled to breakpoints based on the amount of a single mutual fund purchase; the total amount of multiple purchases in the same family of funds; and/or the total amount of mutual fund investments held, at the time of the new purchase, by members of the customer's "household"—typically, accounts of close family members.

Unlike Class A shares, Class B shares are also subject to contingent deferred sales charges (CDSCs) for a period of time, generally six years. Class B and Class C shares are also subject to higher ongoing fees than Class A shares for as long as they are held. Even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels.

"In recommending mutual funds that offer different share classes, brokers must consider the costs for each class and the effect those costs will have on a customer's investment, and recommend the share class that is most advantageous to the customer," said NASD Vice Chairman Mary L. Schapiro.

Since 2002, NASD has provided an online *Mutual Fund Expense Analyzer* to assist brokers and investors in comparing how sales charges, fees, and other fund expenses can affect returns.

In resolving these actions, the firms have agreed to a remediation plan that includes over 50,000 households and more than 275,000 transactions in Class B shares, and, to a lesser extent, Class C shares. The plan generally covers investors who, between January 1, 2002 and March 22, 2005, purchased Class B shares aggregating to \$50,000 or more, depending upon the particular fund's pricing structure. A limited number of investors who purchased Class C shares during the same time frame (generally those who purchased \$500,000) will also be included in the remediation plan. A number of exclusions also apply.

NASD's settlement with Citigroup includes more than 18,000 households, involving more than 90,000 Class B and Class C share transactions. NASD fined Citigroup \$6.25 million, which takes into consideration the \$20 million fine and other sanctions the Securities and Exchange Commission (SEC) is imposing on Citigroup to settle a related enforcement action involving sales of Class B shares, among other things.

NASD's settlement with American Express includes more than 30,000 households and 182,000 Class B share transactions. NASD fined American Express \$13 million. NASD's settlement with Chase involves more than 2,000 households and 4,000 Class B and C share transactions. NASD fined Chase \$2 million. The amount of the fines was based on the estimated additional commissions each firm received in connection with affected Class B share transactions.

Within approximately five months, each firm will notify affected customers that they will have an opportunity to convert certain of their Class B and/or Class C shares to Class A shares so that customers will be restored to the position they would have been in had they originally purchased Class A shares. In addition, those customers who sold some or all of their Class B or Class C shares may be eligible to receive a cash payment relating to the shares that were sold. The plan will take up to nine months to complete, and each firm will provide a response center to handle customer inquiries and to assist affected customers.

NASD is posting a special section on its Web site—*Improper Sale of Mutual Fund Class B and C Shares: Remediation Information for Investors*—to assist investors covered by the remediation plan.

For information about the differences in mutual fund share classes, see the NASD Investor Alerts *Understanding Mutual Fund Classes* and *Class B Mutual Fund Shares: Do They Make the Grade?* (For information about breakpoint discounts on Class A share investments, see the NASD Investor Alerts *Mutual Fund Breakpoints: A Break Worth Taking* and *Mutual Fund Breakpoints: Are You Owed A Refund?*)

Each of the firms settled the actions without admitting or denying the allegations, but consented to the entry of NASD's findings.

### **NASD Fines Spear, Leeds & Kellogg \$1 Million for Concealing Sales of IPO Shares**

#### **Firm Implemented Internal System to Prevent Detection, Reporting of Sales by DTC**

NASD censured and fined Spear, Leeds & Kellogg, L.P. (now known as Goldman Sachs Execution & Clearing, L.P.) \$1 million for creating and implementing an internal system to conceal sales of securities allocated in initial public offerings (IPOs) from the Depository Trust Corporation (DTC).

In 1997, DTC, which provides clearance and settlement services to the securities industry, implemented a system approved by the Securities and Exchange Commission (SEC) to track sales of shares in initial public offerings. The purpose of the system was to allow underwriters to monitor the flipping of new issues. This IPO Tracking System produced IPO Tracking Reports, which identified customer accounts that had sold IPO shares within certain time periods following the allocation of shares. DTC provided IPO Tracking Reports to underwriters upon request. Underwriters used the report information in a number of ways, including determining allocations in future IPOs, and imposing penalty bids on firms whose customers sold IPO shares prior to the expiration of the tracking period.

Spear Leeds had objected to the IPO Tracking System in a comment letter to the SEC during the approval process for the system. In its comment letter, Spear Leeds raised concerns that the system would prevent anonymity in the securities market and restrict secondary market sales. The SEC rejected those concerns.

NASD found that around the time the system was implemented, some Spear Leeds customers objected to their sales of IPO shares being identified through the IPO tracking system, citing concerns about preserving the anonymity of their trading activity, and thereby preserving their ability to obtain future IPOs. In response, Spear Leeds developed and implemented a system designed to conceal sales of IPO shares from the IPO Tracking System.

NASD's disciplinary action rests on Spear Leeds' actions to conceal IPO information from market participants. "For a firm to design a system to deprive underwriters and other market participants of critical information relating to IPO allocations—information that they are entitled to—is deeply troubling, and a serious violation of the high ethical standards required of firms," said NASD Vice Chairman Mary L. Schapiro.

The tracking system required participating firms such as Spear Leeds to establish two accounts—an IPO Control Account and a Free Account. The IPO Tracking system identified the sale of IPO shares when shares were moved from the IPO Control Account to the Free Account. NASD found that to avoid detection by DTC through the tracking system, Spear Leads completed delivery on the sales of IPO shares for its customers by borrowing shares from third parties rather than moving shares from the IPO Control Account. That way, it appeared that the customers still owned their shares, and the sales were not detected and included in the IPO Tracking Report. Once the time period for tracking sales of IPO shares under the IPO Tracking system was over, Spear Leeds replaced borrowed shares by delivering shares from the IPO Control Account back to the third-party lenders.

NASD found that Spear Leeds used this system to circumvent DTC's IPO Tracking System from approximately August 1997 through January 2001. Spear Leeds never informed DTC that it had implemented this system. As a result, numerous sales of IPO shares in accounts at Spear Leeds were not reflected in reports generated by the DTC system.

NASD found that in creating and implementing this system and in failing to disclose its effects to DTC, Spear Leeds violated NASD rules by failing to act in a manner that was consistent with high standards of commercial honor.

In settling this matter, Spear Leeds neither admitted nor denied the charges, but consented to the entry of NASD's findings.

The Goldman Sachs Group acquired Spear Leeds in late 2000. In January 2005, Spear Leeds changed its name to Goldman Sachs Execution & Clearing, L.P.

### **Jefferson Pilot to Pay over \$500,000 in First VUL Market Timing Action; NASD Also Fines Affiliate \$125,000 for E-Mail Retention Violations**

NASD fined Jefferson Pilot Variable Corporation, a Concord, NH broker-dealer, \$325,000 for failing to have an adequate supervisory system in place to prevent market timing and excessive trading in the sub-accounts of its Ensemble series of variable universal life insurance policies (VULs). Jefferson Pilot is the exclusive distributor of Ensemble VULs, which are issued by a Jefferson Pilot insurance affiliate. In addition, the firm must pay \$238,697 in restitution to the affected funds.

Separately, NASD fined another affiliate, Jefferson Pilot Securities Corp. (JPSC), also of Concord, \$125,000 for failing to retain all e-mail communications of its registered persons.

This is the first NASD enforcement action to date involving market timing in VUL sub-accounts. Last June, NASD settled a case involving market timing in the sub-accounts of variable annuities. VULs offer a fixed premium schedule and a minimum death benefit. They differ from traditional whole life insurance in that cash values are allocated to various sub-accounts, each reflecting investments in particular mutual funds that are separate from the general assets of the insurance company.

"Market timing and excessive trading by a few can hurt other fund shareholders by diluting share value and raising transaction costs," said NASD Vice Chairman Mary L. Schapiro. "Jefferson Pilot's failure to conduct a meaningful review of its supervisory systems resulted in the impermissible market timing and excessive trading, which in turn resulted in harm to other policy holders with assets in these sub-accounts."

NASD found that, despite having an electronic system ostensibly designed to recognize and block sub-account transfers in excess of policy limits, Jefferson Pilot failed to determine whether the system was functional. Given the firm's exclusive reliance on this system to monitor sub-account transfers, such follow-up and review was essential. As a result of this failure, 292 Ensemble series VUL policyholders were permitted to exceed the 20-transfers-per-policy-year limit described in the prospectus.

NASD found that in 2003, Jefferson Pilot failed to prevent two VUL policyholders, through the purchase and sale of sub-account units, from engaging in market timing in the shares of three different funds. The two market timers exceeded the prospectus limits by 116 transfers, realizing additional profits

of \$238,697. From January 1, 2001 through December 31, 2003, at least 290 other VUL policyholders had been following an investment strategy that required periodic rebalancing of their sub-account portfolio. Although not market timers, those policyholders still exceeded the VUL prospectus transfer limitations.

Of the \$238,697 in restitution, Jefferson Pilot previously paid \$119,024 to the JPVF International Equity Portfolio. The remainder—an additional \$119,673—will be paid to the following funds: American Century Variable Products, Inc., VP International Fund (\$66,191) and Franklin Templeton Variable Insurance Products Trust Templeton Foreign Securities Fund (\$53,482).

NASD also found that the Jefferson Pilot securities affiliate, JPSC, failed to maintain and preserve all internal e-mail communications for 217 registered persons who were also employed by their affiliated life insurance company. From at least January 1, 2001 through December 31, 2003, JPSC's e-mail system purged the e-mail communications of those 217 registered persons after 60 days. NASD rules require that e-mail communications be retained for no less than three years.

In addition to fining and censuring both firms, NASD required Jefferson Pilot to certify that it has disclosed all instances of transfers within VUL sub-accounts that contravened the limitations set forth in the applicable prospectus and that it has implemented appropriate supervisory controls to enforce prospectus transfer limits; and JPSC was required to certify that it has reviewed its procedures relating to preservation of electronic mail communications and that it has established reasonable supervisory controls to ensure e-mail retention.

In settling this matter, neither firm admitted nor denied the charges, but they consented to the entry of NASD's findings.

### **NASD Charges Knight Securities' Kenneth Pasternak, John Leighton with Supervisory Violations in Fraudulent Sales to Institutional Customers**

#### **Charges Against Former CEO, Head of Sales Desk Follow \$79 Million Settlement with Knight**

NASD charged Kenneth Pasternak, former CEO of Knight Securities, L.P., and John Leighton, former head of the firm's Institutional Sales Desk, with supervisory violations in connection with fraudulent sales to institutional customers in 1999 and 2000.

In December 2004, Knight paid \$79 million to settle NASD and SEC charges that it had defrauded institutional customers through the fraudulent and deceptive conduct of its leading institutional sales trader, who was John Leighton's brother.



That sanction included \$25 million in fines and a payment of \$54 million in ill-gotten profits and interest into a Fair Fund established by the SEC for compensating harmed investors.

The action charges Pasternak and Leighton with failing to supervise Leighton's brother and failing to establish and enforce a system designed to ensure compliance with federal securities laws and NASD rules. NASD's investigation of Leighton's brother is continuing. From January 1999 to September 2000, Leighton's brother was responsible for generating nearly \$135 million in trading profits for Knight, or approximately 30 percent of the trading profits of Knight's entire Institutional Sales Desk. NASD's complaint calls the magnitude of the profits generated by Leighton's brother—both in absolute terms and in profit per share—"extraordinary."

"In this case, it is inconceivable that fraudulent trading of this magnitude could go on for so long and generate such an exorbitant amount of excess profits and escape detection by the firm's supervisory systems and the supervisors themselves," said NASD Vice Chairman Mary L. Schapiro. "Supervisors are obligated to take appropriate steps to ensure that persons acting under their supervision comply with securities law and regulations, and we will not hesitate to take action against supervisors who fail to fulfill that responsibility,"

John Leighton was his brother's supervisor and, under a unique profit-sharing arrangement approved by Pasternak, received half of his brother's trading compensation. NASD's complaint alleges that John Leighton received millions of dollars during 1999 and 2000 from his brother's trading profits, including ill-gotten profits from his brother's fraudulent trading. Their profit-sharing arrangement and family ties created an inherent conflict of interest, and gave John Leighton a strong incentive not to question his brother's trading or how he was able to generate such enormous profits. NASD's complaint alleges that John Leighton did not conduct, and did not arrange for anyone else to conduct, any meaningful supervisory review of his brother's trading and did not take any steps reasonably designed to achieve compliance with federal securities laws and NASD rules.

Pasternak was the Chief Executive Officer of Knight and John Leighton's supervisor. Pasternak was also the designated supervisor of the firm's Institutional Sales Desk in John Leighton's absence. NASD's complaint alleges that Pasternak was responsible for the deficient supervisory structure by assigning John Leighton to supervise his brother's trading while at the same time approving their unique profit-sharing arrangement. Pasternak also failed to have the firm adopt any supervisory procedures or systems that would address the conflict inherent in this unusually suspect arrangement and the deficient supervisory structure he approved.

NASD's complaint alleges that although Pasternak knew that John Leighton assigned most of Knight's largest institutional customer accounts to his brother, and knew that Leighton's brother generated an inordinate amount of profits for Knight in absolute terms and a grossly disproportionate amount of the profits of the firm's Institutional Sales Desk, Pasternak did not take reasonable steps to determine whether John Leighton was monitoring or reviewing his brother's trading, did not review or monitor the trading himself, and did not assign anyone else to do so. Neither John Leighton nor Pasternak questioned the extraordinary profits or took any steps to see how Leighton's brother was making them.

Pasternak served on NASD's Board of Governors from May 30, 2000 to September 17, 2001.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.